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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,380	03/30/2004	Paul James Buriak	2004B020	4679

7590 04/30/2008
ExxonMobil Chemical Company
Law Technology
P.O. Box 2149
Baytown, TX 77522-2149

EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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04/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/813,380	Applicant(s) BURIAC ET AL.	
	Examiner WALTER B. AUGHENBAUGH	Art Unit 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 32-55 and 64.
 Claim(s) withdrawn from consideration: 1-31 and 56-63.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Walter B Aughenbaugh /
 Patent Examiner, Art Unit 1794

Continuation of 3. NOTE: the amendment raises new issues that require further consideration and/or search: the combination of the limitations of claims 37 and 51 that was not required prior to the after-final amendment of independent claim 32 is a new issue that requires further consideration and/or search. The after-final inclusion of the limitation of claim 51 in independent claim 32 presents a new issue also because this amendment broadens the scope of the carbon dioxide permeability values recited in claim 32 over that recited in claims 35 and 36 as finally rejected (the range of claim 51 was not claimed in relation to independent claim 32 prior to the after-final amendment). The combination of the limitations of claims 49 and 51 that was not required prior to the after-final amendment of independent claim 45 is a new issue that requires further consideration and/or search.

Continuation of 11. does NOT place the application in condition for allowance because: Examiner maintains the rejections of the claims of record for the reasons of record, including those stated in the "Reponse to Arguments" section of the previous Office Action. As stated in the rejection of record:

"In additional layer in the "core of a multilayered structure" (col. 7, lines 53-54), that is located between the inner and outer walls of the inner layer of the second embodiment (which falls within the scope of the teachings at col. 5, lines 49-51 and col. 7, lines 52-55), corresponds to the claimed barrier layer because any additional layer would serve as a barrier layer because the additional bulk of the layer would further retard the permeation of gas through the multilayer structure as compared with the multilayer structure without the additional layer. The barrier layer taught at col. 5, lines 49-51 and col. 7, lines 54-55, that is located between the inner and outer walls of the inner layer of the second embodiment (which falls within the scope of the teachings at col. 5, lines 49-51 [particularly, "... may be assembled into the hose..."] and col. 7, lines 52-55), also corresponds to the claimed barrier layer."

Therefore, the claimed barrier layer falls within the scope of the teachings of Kitami et al. for the reasons of record.

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